

[Waiver 1996-1]

MEMORANDUM

January 22, 1996

TO: Betty Ann Krahnke, Councilmember
Montgomery Council

FROM: Laurie Horvitz, Chair [initialed]
Montgomery County Ethics Commission

RE: Request for Waiver—Council Consideration of Potential Changes in Retirement Insurance Coverage

You have requested a waiver to allow you to participate in upcoming matters involving changes to the retirement insurance coverage for Montgomery County, MCPS, Montgomery College, and MNCPPC. You explained that, due to your two terms on the MNCPPC, you are a member of the retirement plan for MNCPPC and eligible for the \$10,000 death benefit. In addition, you are a member of the Elected Officials Retirement Plan for County government.

The Commission agrees that you currently have a conflict for which a waiver is needed if you are to participate in these matters. Section 19A-11(a)(1)(A) of the Montgomery County Code 1994, as amended, provides:

- (a) *Prohibitions.* Unless permitted by a waiver, a public employee must not participate in:
 - (1) any matter that affects, in a manner distinct from its effect on the public generally, any:
 - (A) property in which the public employee holds an economic interest;

Your participation would affect your economic interest in the retirement plans in a manner distinct from the effect of your participation on the public generally.

The standard governing a waiver of this conflict is as follows:

After receiving a written request, the Commission may grant to a public employee or a class of public employees a waiver of the prohibitions of this Chapter and Sections 11B-51 and 11B-52(a) if it finds that:

- (1) the best interests of the County would be served by granting the waiver;
- (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) granting the waiver will not give the public employee or class of employees an unfair economic

advantage over other public employees or members of the public.

§19A-8(a) of the Montgomery County Code 1994, as amended.

In this particular situation, the best interests of the County are served by enabling you, a public official with considerable legislative expertise, to participate in such important matters. In this case, it does not serve the County's best interests to require your recusal on matters that significantly affect the County's current and future budgets. Your participation is central to your public responsibilities as a Council member. Moreover, the importance of your participation outweighs the actual or potential harm of any conflict. Since you are only one of the many participants addressing these retirement and budget issues, the potential for harm is extremely limited. The risk of any harm may be further reduced by a public disclosure of your interests in the retirement plans. Furthermore, you have assured the Commission that you will not address these issues from a "personal interest standpoint." Finally, you will not receive an unfair advantage over other members of the public. Of course, the retirement plans focus on specific employees, not the general public. However, it would be extremely difficult for you to gain an advantage that would not apply to other members of the affected retirement plans. The full Council must vote on these issues and will presumably protect against any unfair advantage to particular members.

For these reasons, the Commission grants the waiver you have requested, with the condition that you disclose your membership in the affected retirement plans on the public legislative record. If you have any questions concerning this decision, please feel free to contact the Commission.